

SENATE BILL No. 573

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-6-2; IC 34-30-21; IC 34-54-12.

Synopsis: Uniform Foreign Money Claims Act. Enacts the Uniform Foreign Money Claims Act.

Effective: July 1, 2005.

Simpson

January 20, 2005, read first time and referred to Committee on Judiciary.

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First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

SENATE BILL No. 573

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 34-6-2-1.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2005]: **Sec. 1.5. "Action", for purposes of IC 34-54-12, means a**
4 **judicial proceeding or an arbitration in which money may be**
5 **awarded or enforced with respect to a foreign money claim.**

6 SECTION 2. IC 34-6-2-15.5 IS ADDED TO THE INDIANA CODE
7 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
8 1, 2005]: **Sec. 15.5. "Bank offered spot rate", for purposes of**
9 **IC 34-54-12, means the spot rate of exchange at which a bank will**
10 **sell foreign money at a spot rate.**

11 SECTION 3. IC 34-6-2-29.5 IS ADDED TO THE INDIANA CODE
12 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
13 1, 2005]: **Sec. 29.5. "Conversion date", for purposes of IC 34-54-12,**
14 **means the banking day immediately preceding the date on which**
15 **money is:**

16 **(1) paid to a claimant in an action or a distribution**
17 **proceeding;**



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(2) paid to the official designated by law to enforce a judgment or an award on behalf of a claimant; or

(3) used in an action or a distribution proceeding to recoup, set off, or counterclaim in different moneys.

SECTION 4. IC 34-6-2-34.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 34.3. "Distribution proceeding", for purposes of IC 34-54-12, means a judicial or nonjudicial proceeding for the distribution of a fund in which one (1) or more foreign money claims are asserted. The term includes:

(1) an accounting;

(2) an assignment for the benefit of creditors;

(3) a foreclosure;

(4) the liquidation or rehabilitation of a corporation or other entity; and

(5) the distribution of an estate, a trust, or another fund.

SECTION 5. IC 34-6-2-48.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 48.4. (a) "Foreign money", for purposes of IC 34-54-12, means money other than money of the United States.

(b) "Foreign money claim", for purposes of IC 34-54-12, means a claim on an obligation to pay or a claim for recovery of a loss expressed in or measured by a foreign money.

SECTION 6. IC 34-6-2-83.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 83.5. "Money", for purposes of IC 34-54-12, means a medium of exchange for the payment of obligations or a store of value authorized or adopted by a government or by an intergovernmental agreement.

SECTION 7. IC 34-6-2-83.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 83.7. "Money of the claim" means the money agreed to by the parties or otherwise determined under IC 34-54-12-4.

SECTION 8. IC 34-6-2-103 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 103. (a) "Person", for purposes of IC 34-14, has the meaning set forth in IC 34-14-1-13.

(b) "Person", for purposes of IC 34-24-4, means:

(1) an individual;

(2) a governmental entity;

(3) a corporation;

(4) a firm;

(5) a trust;

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(6) a partnership; or

(7) an incorporated or unincorporated association that exists under or is authorized by the laws of this state, another state, or a foreign country.

(c) "Person", for purposes of section 44.8 of this chapter, means an adult or a minor.

(d) "Person", for purposes of IC 34-26-4, has the meaning set forth in IC 35-41-1-22.

(e) "Person", for purposes of IC 34-30-5, means any of the following:

(1) An individual.

(2) A corporation.

(3) A partnership.

(4) An unincorporated association.

(5) The state (as defined in IC 34-6-2-140).

(6) A political subdivision (as defined in IC 34-6-2-110).

(7) Any other entity recognized by law.

(f) "Person", for purposes of IC 34-30-6, means an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity that:

(1) has qualifications or experience in:

(A) storing, transporting, or handling a hazardous substance or compressed gas;

(B) fighting fires;

(C) emergency rescue; or

(D) first aid care; or

(2) is otherwise qualified to provide assistance appropriate to remedy or contribute to the remedy of the emergency.

(g) "Person", for purposes of IC 34-30-18, includes:

(1) an individual;

(2) an incorporated or unincorporated organization or association;

(3) the state of Indiana;

(4) a political subdivision (as defined in IC 36-1-2-13);

(5) an agency of the state or a political subdivision; or

(6) a group of such persons acting in concert.

(h) "Person", for purposes of sections 42, 43, 69, and 95 of this chapter, means an individual, an incorporated or unincorporated organization or association, or a group of such persons acting in concert.

(i) "Person", for purposes of IC 34-30-10.5, means the following:

(1) A political subdivision (as defined in IC 36-1-2-13).

(2) A volunteer fire department (as defined in IC 36-8-12-2).

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(3) An employee of an entity described in subdivision (1) or (2) who acts within the scope of the employee's responsibilities.

(4) A volunteer firefighter (as defined in IC 36-8-12-2) who is acting for a volunteer fire department.

(5) ~~After March 31, 2002~~; A corporation, a limited liability company, a partnership, an unincorporated association, or any other entity recognized by law.

(j) **"Person", for purposes of IC 34-54-12, means:**

(1) **an individual;**

(2) **a corporation;**

(3) **a government or governmental subdivision or agency;**

(4) **a business trust;**

(5) **an estate;**

(6) **a trust;**

(7) **a joint venture;**

(8) **a partnership;**

(9) **an association;**

(10) **two (2) or more persons having a joint or common interest; or**

(11) **any other legal or commercial entity.**

SECTION 9. IC 34-6-2-128.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 128.5. (a) "Rate of exchange", for purposes of IC 34-54-12, means the rate at which the money of a country is converted into the money of another country in a free financial market convenient to or reasonably usable by a person obligated to pay or to state a rate of conversion.**

(b) If separate rates of exchange apply to different kinds of transactions, the term means the rate applicable to the particular transaction giving rise to the foreign money claim.

SECTION 10. IC 34-6-2-139.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 139.5. "Spot rate", for purposes of IC 34-54-12, means the rate of exchange at which foreign money is sold by a bank or another dealer in foreign exchange for:**

(1) **immediate or next day availability; or**

(2) **settlement by:**

(A) **immediate payment in cash or a cash equivalent;**

(B) **a charge to an account; or**

(C) **an agreed delayed settlement not exceeding two (2) days.**

SECTION 11. IC 34-6-2-140 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 140. "State":

(1) for purposes of IC 34-13-3, means Indiana and its state agencies; ~~and~~

(2) for purposes of sections 48.5 and 71.7 of this chapter and IC 34-26-5, has the meaning set forth in IC 1-1-4-5; ~~and~~

(3) for purposes of IC 34-54-12, means:

(A) a state of the United States;

(B) the District of Columbia;

(C) the Commonwealth of Puerto Rico; or

(D) a territory or insular possession subject to the jurisdiction of the United States.

SECTION 12. IC 34-30-21 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 21. Uniform Foreign Money Claims Act: Immunity for Judges

Sec. 1. A judicial officer performing a computation under IC 34-54-12-11 is immune from civil liability for valuing the amount of process, costs, bond, or another undertaking of the court in United States dollars based on an affidavit or a certificate filed under IC 34-54-12-11(d).

SECTION 13. IC 34-54-12 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 12. Uniform Foreign Money Claims Act

Sec. 1. This chapter may be cited as the Uniform Foreign Money Claims Act.

Sec. 2. (a) This chapter applies only to a foreign money claim in an action or a distribution proceeding.

(b) This chapter applies to matters concerning foreign money notwithstanding the application of other laws under the conflict of laws rules of Indiana regarding other issues in the action or distribution proceeding.

Sec. 3. (a) The requirements and effect of this chapter may be varied by agreement of the parties made before or after the:

(1) commencement of an action or a distribution proceeding; or

(2) entry of a judgment.

(b) The parties to a transaction governed by this chapter may agree:

(1) on the money to be used in the transaction giving rise to a foreign money claim; and

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(2) to use different money for different aspects of the transaction.

(c) A stated price in a foreign money for one (1) aspect of a transaction governed by this chapter does not require the use of the foreign money for other aspects of the transaction.

Sec. 4. (a) The parties to a transaction governed by this chapter may enter into an agreement to establish the money of the claim.

(b) If the parties to a transaction governed by this chapter do not reach an agreement under subsection (a), the proper money of the claim is the money:

(1) regularly used between the parties as a matter of usage or course of dealing;

(2) used at the time of the transaction in international trade, by trade usage or common practice, for valuing or settling transactions in the particular commodity or service involved; or

(3) in which the loss was ultimately felt or will be incurred by the party claimant.

Sec. 5. (a) If a contract establishes payment in foreign money and the payment of the foreign money is measured by a specified amount of money that is different from the foreign money, the amount of payment is determined on the conversion date.

(b) If a contract establishes an amount for payment in foreign money and the foreign money is to be measured by money different from the foreign money at the rate of exchange prevailing on a date before default, the rate of exchange applies only to payments made:

(1) within a reasonable time after default; and

(2) not later than thirty (30) days after default.

If payment is made after the period described in subdivisions (1) and (2), the conversion is made at the bank offered spot rate on the conversion date after the date of default.

(c) A money claim is not usurious or unconscionable because the agreement on which the money claim is based provides that the amount of the debtor's obligation to be paid in the debtor's money, when received by the creditor, must equal a specified amount of the foreign money of the country of the creditor.

(d) If, due to an unexcused delay in the payment of a judgment or an award, the amount of money received by the creditor referred to in subsection (c) does not equal the amount of the foreign money specified in the agreement, the court or arbitrator shall amend the judgment or award accordingly.

Sec. 6. (a) A person may assert a claim in a specified foreign

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money. If a foreign money claim is not asserted, the claimant makes the claim in United States dollars.

(b) An opposing party may allege and prove that a claim, in whole or in part, is in a different money than the money asserted by the claimant.

(c) A person may assert a defense, set off, recoupment, or counterclaim in any money without regard to the money of other claims.

(d) The determination of the proper money of the claim is a question of law.

Sec. 7. (a) Except as provided in subsection (c), a judgment or an award on a foreign money claim must be stated in an amount of the money of the claim.

(b) A judgment or an award on a foreign money claim is payable in the foreign money or, at the option of the debtor, in the amount of United States dollars that will purchase the foreign money on the conversion date at a bank offered spot rate.

(c) Assessed costs must be entered in United States dollars.

(d) Each payment in United States dollars must be accepted and credited on a judgment or an award on a foreign money claim in the amount of the foreign money that may be purchased by United States dollars at a bank offered spot rate of exchange at or near the close of business on the conversion date for the payment.

(e) A net judgment or net award made in an action or a distribution proceeding that includes an award based upon an adverse party's claim of defense, set off, recoupment, or counterclaim is determined by converting the money of the smaller judgment or award into the money of the larger judgment or award and subtracting the smaller judgment or award from the larger judgment or award. The rates of exchange used in making a conversion under this subsection must be provided to each party to the judgment or award.

(f) A judgment substantially in the following form complies with subsection (a):

"IT IS ADJUDGED AND ORDERED, that Defendant (insert name) pays to Plaintiff (insert name) the sum of (insert amount in the foreign money) plus interest on that sum at the rate of (insert rate determined under section 9 of this chapter) percent a year or, at the option of the judgment debtor, the number of United States dollars that will purchase the (insert name of foreign money) with interest due, at a bank offered spot rate at or near the close of business on the banking day

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immediately preceding the day of payment, together with assessed costs of (insert amount) in United States dollars."

(g) If a contract claim is based on a contract described in section 5(a) or 5(b) of this chapter, the judgment or award must be entered for the amount of money required by the contract and paid in the:

- (1) money specified for payment in the contract; or
- (2) number of United States dollars that will purchase the computed amount of the money specified for payment in the contract on the conversion date at a bank offered spot rate.

A judgment or an award is required to be entered in the manner described in subdivision (2) only if the debtor elects this method of computation.

(h) A judgment must be recorded and indexed in foreign money:

- (1) in the same manner as other judgments; and
- (2) with the same effect as a lien.

A judgment is discharged by full payment of the judgment.

Sec. 8. (a) The rate of exchange prevailing at or near the close of business on the day a distribution proceeding is initiated governs all exchanges of foreign money in the distribution proceeding.

(b) A foreign money claimant in a distribution proceeding must:

- (1) assert a claim in the designated foreign money; and
- (2) show the amount of United States dollars resulting from a conversion on the date the proceeding is initiated.

Sec. 9. (a) The recovery of prejudgment or preaward interest and the rate of interest applied in an action or a distribution proceeding for a foreign money claim, except as provided in subsection (b), are matters of the substantive law governing the right to recovery under the conflict of laws rules of Indiana.

(b) A court or an arbitrator shall increase or decrease the amount of prejudgment or preaward interest otherwise payable in a judgment or an award in foreign money:

- (1) to the extent required by the law governing a failure to make or accept an offer of settlement or offer of judgment; or
- (2) based on the conduct of a party or an attorney of a party that causes undue delay or expense.

(c) A judgment or an award for a foreign money claim bears interest at the rate applicable to judgments in Indiana.

Sec. 10. (a) If an action is brought to enforce a judgment of another jurisdiction that is expressed in a foreign money and the judgment is recognized in Indiana as enforceable, the order enforcing the judgment must be entered as provided in section 7 of this chapter, whether or not the foreign judgment provides an

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option to pay in an equivalent amount of United States dollars.

(b) A foreign judgment may be recorded in the manner provided by a rule or statute if the rule or statute provides a procedure for the recognition and enforcement of the foreign judgment.

(c) The satisfaction or partial payment of a foreign judgment must be credited against the amount of foreign money specified in the judgment, notwithstanding the entry of the judgment in Indiana.

(d) A judgment entered:

(1) in another state; and

(2) only in United States dollars;

for a foreign money claim must be enforced in Indiana only in United States dollars.

Sec. 11. (a) A computation under this section is for the limited purpose of this section and does not affect computation of the United States dollar equivalent of the money of the judgment for the purpose of payment.

(b) For the limited purpose of facilitating the enforcement of provisional remedies in an action, the value in United States dollars:

(1) of assets subject to seizure or restraint under:

(A) a writ of attachment;

(B) a garnishment;

(C) an execution; or

(D) another legal process;

(2) at issue for assessing costs;

(3) for a surety bond; or

(4) in any other court required undertaking;

is determined as provided in subsections (c) and (d).

(c) A petitioner for an action described in subsection (b) shall compute in United States dollars the amount of the foreign money claimed based upon a bank offered spot rate prevailing at or near the close of business on the banking day immediately preceding the filing of the petition for the action described in subsection (b).

(d) A petitioner for an action described in subsection (b) shall file with each petition an affidavit or a certificate executed in good faith by the petitioner's attorney or a bank officer. The affidavit or certificate must:

(1) include the market quotation used in the computation;

(2) include the manner in which the market quotation was obtained; and

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(3) set forth the calculation.

Sec. 12. (a) If, after:

(1) an obligation is expressed; or

(2) a loss is incurred;

in a foreign money, the country issuing or adopting the money substitutes a new money in place of the money in which the obligation is expressed or the loss is incurred, the obligation or loss is treated as if expressed or incurred in the new money at the rate of conversion that the issuing country establishes for the payment of similar obligations or losses denominated in the former money.

(b) If substitution under subsection (a) occurs after a judgment or an award is entered on a foreign money claim, the court or arbitrator shall amend the judgment or award by a similar conversion of the former money.

Sec. 13. The principles of law and equity, including:

(1) the law merchant; and

(2) the law relating to:

(A) capacity to contract;

(B) principal and agent;

(C) estoppel;

(D) fraud;

(E) misrepresentation;

(F) duress;

(G) coercion;

(H) mistake;

(I) bankruptcy; or

(J) any other validating or invalidating causes;

have full force and effect for purposes of this chapter unless a principle of law or equity conflicts with this chapter.

Sec. 14. This chapter must be applied and construed to effectuate the chapter's general purpose, which is to make uniform the law with respect to the subject of this chapter among enacting states.

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